

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR 08-1902 JB

JESUS PEREZ-PEREZ,

Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on the Defendant's Sentencing Memorandum of Incorporation of Government's New Plea Policy as to Sentence, filed October 3, 2008 (Doc. 15). The Court held a sentencing hearing on October 21, 2008. The primary issue is whether the Court should recompute Defendant Jesus Perez-Perez' guideline sentence to reflect the changes in the United States' recent "fast-track" plea policy. Because the United States Probation Office ("USPO") has issued an Addendum recalculating the advisory guideline range consistent with the new fast-track plea policy, and because the United States and Perez-Perez has entered into a new written plea agreement to reflect that the plea is pursuant to the United States Attorney's new fast-track plea program, the Court will grant Perez-Perez' request to sentence him to 10-months of incarceration.

PROCEDURAL BACKGROUND

On May 31, 2008, Perez-Perez entered into a plea agreement pursuant to rule 11(c)(1)© of the Federal Rules of Criminal Procedure stipulating to a total offense level of 9. According to the original Pre-Sentence Investigation Report ("PSR"), after taking into consideration Perez-Perez' acceptance of responsibility and his "fast-track" plea, he has a total offense level of 9, a criminal

history score of 8, and a criminal history category of IV.¹ The advisory guideline sentence is 12-18 months.

On September 16, 2008, the United States Attorney's Office for the District of New Mexico issued a new "fast-track" plea policy for illegal re-entry cases in the District of New Mexico. The United States stated that this new policy would be effective, not only for future cases, but also for any illegal re-entry case eligible for "fast-track" treatment where a plea had been entered but the sentencing was pending. Perez-Perez has entered a "fast-track" plea, but has not yet been sentenced.

On October 3, 2008, Perez-Perez submitted and filed a sentencing memorandum, requesting that the Court and the USPO incorporate the new plea and sentencing policy of the United States Attorney's Office. Perez-Perez requested that the USPO recompute his guideline sentence to reflect the changes in the United States' recent "fast-track" plea policy. With the change in the benefits granted because Perez-Perez accepted and entered into a "fast-track" plea, his offense level would be 8, thereby changing his guideline sentence to 10-16 months.

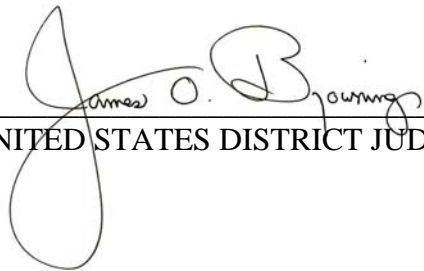
Taking into consideration that the Court would probably, under the original plea agreement, give Perez-Perez 12 months and a day, thereby making him eligible for good time, it appears that the sentence under the new plea policy would reduce his sentence by approximately six days. Perez-Perez asks that the Court properly consider these factors in imposition of a reasonable sentence and incorporate the United States' amended plea policy into the guideline sentencing calculation, thereby resulting in a sentence of 10 months. On October 3, 2008, the USPO issued an Addendum, agreeing that the guideline imprisonment range should be 10 to 16 months.

¹ In his Sentencing Memorandum, Perez-Perez incorrectly states that he is in a criminal history category of III. A criminal history score of 8 places the criminal history category at IV. This mistake does not affect the guideline imprisonment range based on the requested recalculation, which is 10 to 16 months.

ANALYSIS

The Court will make adjustments to the offense level that are consistent with the United States Attorney's new Fast-Track plea program. As such, the offense level is 8. An offense level of 8 combined with a criminal history category of IV results in a guideline imprisonment range of 10 to 16 months. The Court will sentence Perez-Perez to a sentence of 10 months.

IT IS ORDERED that the Defendant's request in his Sentencing Memorandum that the United States Probation Office recompute his guideline sentence to reflect the changes in the United States' recent "fast-track" plea policy is granted.



UNITED STATES DISTRICT JUDGE

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